

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

May 27, 2011

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

PSF No.: 11HD-036

Hawaii

Rescind Prior Board Action of April 22, 1977, Item F-2; Set Aside to the County of Hawaii for Landscaping, Maintenance, Public Access, Pedestrian Way and Ancillary Purposes; Issuance of Immediate Management Right-of-Entry, Auhaueae 2<sup>nd</sup>, North Kona, Hawaii, Tax Map Key: 3<sup>rd</sup>/ 7-5-09:26.

APPLICANT:

County of Hawaii

LEGAL REFERENCE:

Section 171-11, Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Portion of Government lands of Auhaueae 2<sup>nd</sup> situated at North Kona, Hawaii, identified by Tax Map Key: 3<sup>rd</sup>/ 7-5-09:26, as shown on the attached map labeled Exhibit A.

AREA:

23,161 square feet, more or less.

ZONING:

State Land Use District:	Urban
County of Hawaii CZO:	Open (also in Special Management Area)

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

Vacant and unencumbered.

PURPOSE:

Landscaping, Maintenance, Public Access, Pedestrian Way and Ancillary Purposes.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

See Exhibit B attached.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost.
- 2) Obtain a title report to ascertain ownership, where necessary, at Applicant's own cost and subject to review and approval by the Department.

REMARKS:

The subject land is a small coastal parcel in Kailua-Kona that is unsuited for development due to its irregular shape, the restrictive County of Hawaii zoning applicable to the land, and its location in the Special Management Area. At the same time, the parcel is too large to qualify as a remnant under applicable law. Over the past several decades, there have been multiple requests regarding the disposition of the land from the County as well as one of the adjoining landowners to the south, whom County tax records identify as Olu Kai, Ltd.<sup>1</sup>

By letter dated March 3, 1973, the County requested the set-aside of the land to it for park purposes. At its meeting of April 22, 1977, Item F-2, the Board of Land and Natural Resources approved the County's set-aside request. See Exhibit C attached.

However, the file indicates that unresolved boundary issues prevented the Department of

---

<sup>1</sup> County tax records indicate Olu Kai, Ltd. is the fee owner of TMK: 3rd/ 7-5-09:16 shown on Exhibit A, and Kamehameha Schools/Bishop Estate (KSBE) is the fee owner of TMK: 3rd/ 7-5-09:14 (Parcel 14). Olu Kai, Ltd. apparently leases Parcel 14 from KSBE for the operation of a restaurant.

Accounting and General Services (DAGS), Survey Division, from completing the CSF map for the parcel. Staff is including an Applicant Requirement above that the County provide survey maps and descriptions for the land to facilitate completion of the CSF map. Additionally, an April 27, 1977 letter from DAGS to the Chairperson notes that there was a title claim asserted by a private party to the property. The file does not indicate how this claim was resolved. Staff is including an Application Requirement above that the County provide a title report for the land to ensure that there are no outstanding title issues.

By letter dated January 12, 1987, the County requested that the Board's April 22, 1977 action approving the set-aside be rescinded because the County had no plans for the parcel at that time. By letter dated September 18, 1998, the County requested the termination of its right-of-entry over the area. Yet a memorandum dated January 16, 2002 from the County Planning Director to the County Parks and Recreation Director requests County Parks and Recreation to pursue the set-aside of the area in conjunction with improvements to Alii Drive. However, a letter dated February 26, 2002 from the County to DLNR advised that County Parks and Recreation was withdrawing its request for the set-aside.

In the meantime, the file reflects a number of attempts by the adjoining property owner/lessee Olu Kai, Ltd. to lease the parcel. However, any such lease would have required going to public auction, and any development would have likely triggered a rezoning of the parcel and an SMA permit. In any event, the land was never put out to auction, nor was the Board's April 22, 1977 approval of the set-aside to the County rescinded.

By letter dated January 4, 2011, Hugo von Platen Luder of Olu Kai, Ltd. wrote to Governor Neil Abercrombie recapitulating some of his efforts over the years to lease the parcel and reiterating his interest in the land. The Chairperson responded to this letter on February 14, 2011 with the copy to the County, requesting the County to indicate whether it still had plans for the parcel. In the interim, Mayor William Keno'i wrote to the Chairperson on February 11, 2011 expressing and confirming the County's interest in acquiring the parcel for the above-referenced purposes.

Specifically, the County intends to improve Alii Drive in the area by constructing pedestrian ways along the parcel's boundary with Alii Drive. Once these ways are in place, there will be little usable space remaining of the parcel, and what does remain will be devoted to public access. The County will landscape and maintain the parcel. The County published its Draft Environmental Assessment for the Alii Drive Improvements Along Oneo Bay, Hualalai Road to Walua Road in The Environmental Notice on July 8, 2009, which identifies the subject land as one of the parcels required for pedestrian ways.

Staff believes that County's proposed use is the highest and best use of the land in light of its small area, irregular shape and the restrictive zoning. When the pedestrian ways are

installed and the property is landscaped, the County's proposed use will fully utilize the land.

Comments were solicited from the agencies identified below with the results indicated.

<b>Agency</b>	<b>Response</b>
<b>State:</b>	
DLNR-Historic Preservation	No response
DLNR-State Parks	No comments
DLNR-Engineering	Subject land is located in Flood Zone AE. National Flood Insurance Program regulates development within this zone. Engineering has no objection to the proposed action.
DLNR-Division of Forestry and Wildlife – Na Ala Hele	No response
DLNR-Aquatic Resources	No response
Office of Hawaiian Affairs	No response
<b>County of Hawaii:</b>	
Planning Department	No objections. No SMA review required for the set-aside or right-of-entry.
Public Works	No response
Parks and Recreation	No response
Property Management	No objections
<b>Federal:</b>	
National Park Service - Ala Kahakai National Historic Trail	No response

In the past, DLNR has issued rights-of-entry to various groups to clean the parcel. However, there are no outstanding permits at the present time. There are no encumbrances on the parcel.

Staff is including a recommendation below that an immediate management right-of-entry be issued to the County for the parcel.

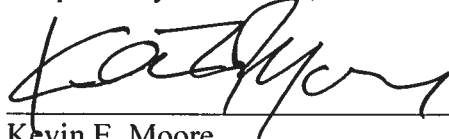
Staff is including a recommendation below that the seaward boundary in the executive order setting aside the property be established at the mean lower low water line. This will give the County management jurisdiction over the entire area instead of leaving Land Division with management responsibility for a strip of land seaward of the shoreline.

**RECOMMENDATION:**

That the Board, subject to Applicant fulfilling the Applicant Requirements above:

1. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject lands to the County of Hawaii under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
  - A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
  - B. The seaward boundary of the lands set-aside shall be the mean lower low water line;
  - C. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
  - D. Review and approval by the Department of the Attorney General; and
  - E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Authorize the issuance of an immediate management right-of-entry permit to the County of Hawaii covering the subject land under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
  - A. The standard terms and conditions of the most current right-of-entry permit form, as may be amended from time to time; and
  - B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Kevin E. Moore  
District Land Agent

APPROVED FOR SUBMITTAL:



William J. Aila, Jr., Chairperson

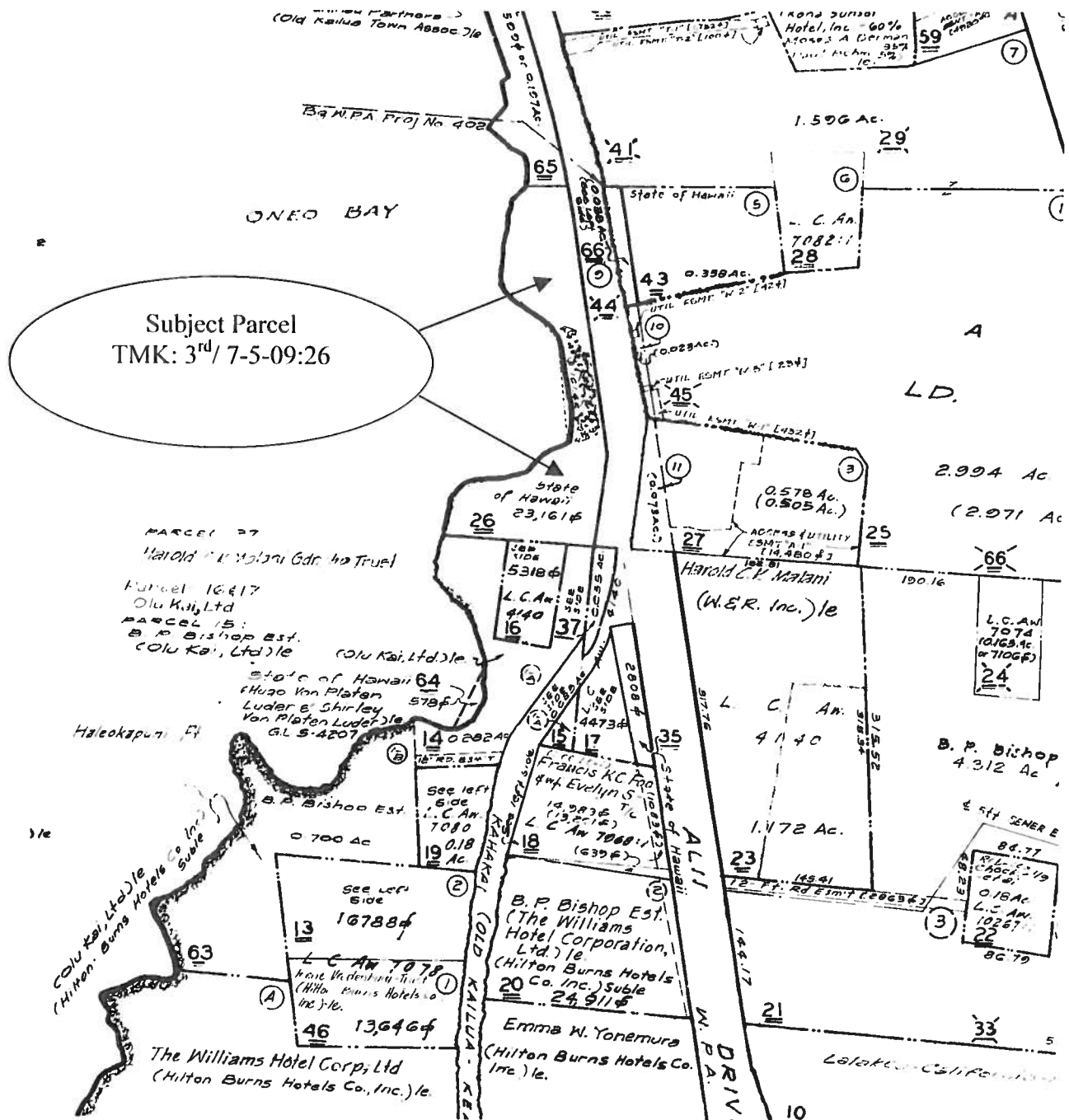


EXHIBIT A

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



WILLIAM J. AILA, JR.  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

**EXEMPTION NOTIFICATION**

From the preparation of an environmental assessment under the authority of Chapter 343, HRS and Chapter 11-200, HAR

**Project Title:** Rescind Prior Board Action of April 22, 1977, Item F-2; Set Aside to the County of Hawaii for Landscaping, Maintenance, Public Access, Pedestrian Way and Ancillary Purposes; Issuance of Immediate Management Right-of-Entry

**Project Number:** PSF No. 11HD-036

**Project Location:** Auhaukeae 2<sup>nd</sup>, North Kona, Hawaii, Tax Map Key: 3<sup>rd</sup>/ 7-5-09:26

**Project Description:** Set aside of State lands to the County of Hawaii for future pedestrian way construction, public access, landscaping, maintenance and ancillary purposes

**Consulted Parties:** Department of Land and Natural Resources (DLNR), Historic Preservation Office; County of Hawaii Planning Department; and others

**Exemption Class No.:** In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment under the following:

Exemption Class No. 1, which states, "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing."

**EXHIBIT B**

This action is merely a transfer of management jurisdiction and does not constitute a use of State lands or funds, and therefore, this action is exempt from the provisions of Chapter 343, HRS, relating to environmental impact statements.

**Recommendation:**

The transfer of management jurisdiction over the lands from the State to the County of Hawaii in itself will probably have minimal or no significant effect on the environment. It is recommended that the Board of Land and Natural Resources find that the proposed transfer is exempt from the preparation of an environmental assessment. Inasmuch as the Chapter 343 environmental requirements apply to the County of Hawaii's proposed use of the lands, the County of Hawaii shall be responsible for compliance with Chapter 343, HRS, as amended. In this regard, we note that the County already published its Draft Environmental Assessment for the Alii Drive Improvements Along Oneo Bay, Hualalai Road to Walua Road in The Environmental Notice on July 8, 2009.

  
\_\_\_\_\_  
William J. Aila, Jr., Chairperson

  
\_\_\_\_\_  
Date



GEORGE R. ARIYOSHI  
GOVERNOR OF HAWAII



STATE OF HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES

DIVISION OF LAND MANAGEMENT

P. O. BOX 621

HONOLULU, HAWAII 96809

DIVISIONS:  
CONVEYANCES  
FISH AND GAME  
FORESTRY  
LAND MANAGEMENT  
STATE PARKS  
WATER AND LAND DEVELOPMENT

April 22, 1977

Board of Land and  
Natural Resources  
Honolulu, Hawaii

Gentlemen:

HAWAII

Subject: Resubmittal  
County of Hawaii Request for Set Aside of State  
Land in Kailua, North Kona, Hawaii, for Park  
Purposes. TMK: 7-5-09:26

The County of Hawaii has requested set aside of subject premises for park purposes because the County has been asked by several Kailua citizens' groups to clean and maintain the area for use as a mini park. The lot is vacant and is being used as a dumping ground; it has become an eyesore.

Parcel 26 is unencumbered, contains approximately 23,161 square feet, and is located makai of Alii Drive on Oneo Bay on the Kailua side of Huggo's Restaurant. It is delineated in red on tax map plat attached to basic file.

The County feels that said parcel is an excellent one to develop as a park, especially as a rest area and vista lookout. Also, park development would be in line with the County's current beautification project in Kailua.

Pending formal set aside of subject premises, the County has requested right of entry for planning and cleanup purposes. This item was submitted at the Board meeting of March 24, 1977.  
RECOMMENDATION:

That the Board:

- A. Approve of and recommend to the Governor of Hawaii issuance of executive order placing Parcel 26, TMK: 7-5-09, containing approximately 23,161 sq. ft., under the management and jurisdiction of the County of Hawaii, Department of Parks and Recreation, for parks purposes, subject to the following terms and conditions:
  1. The Grantee shall submit a minimum of 3 copies of plans for earthwork and construction to the Chairman for review and approval and to notify the Department of each work activity.
  2. The Grantee shall comply with all applicable statutes, ordinances, rules and regulations of


EXHIBIT C

Board of Land and  
Natural Resources


April 22, 1977

3. That the set aside shall be subject to disapproval by the Legislature at the next regular or special session.
  4. Other terms and conditions as may be prescribed by the Chairman.
- B. Grant immediate right of entry to the applicant for planning and cleanup purposes, subject to the standard indemnity and hold-harmless clause.

Respectfully submitted,

  
JAMES J. DETOR  
Land Management Administrator

APPROVED FOR SUBMITTAL:

  
CHRISTOPHER COBB, Chairman